IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 20981 of 2005

For Approval and Signature:

HONOURABLE MR.JUSTICE K.M.MEHTA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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KAMLESHKUMAR JAWAHARLAL RAI THRO FATHER JAWAHARLAL - Petitioner(s)

Versus

COMMISSIONER OF POLICE AHMEDABAD CITY & 2 - Respondent(s)

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Appearance :

MR AZIZ N ALVI for Petitioner(s) : 1,

MR LR POOJARI, AGP for Respondents.

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CORAM : HONOURABLE MR.JUSTICE K.M.MEHTA

Date : 02/12/2005

ORAL JUDGMENT

1. Kamleshkumar Jawaharlal Rai, through his father Jawaharlal Ramsurat Rai, petitioner has filed this petition with a prayer this Court may quash and set

aside the order of detention dated 18th August, 2005, passed by the respondent No.1- Commissioner of Police, Ahmedabad City. By the impugned order the petitioner has been detained as a “dangerous person” under the provisions of the Gujarat Prevention of Anti-social Activities Act, 1985 (“PASA” for short). Along with the detention order, the petitioner was also served with the grounds of detention. The petition was filed on 8th October, 2005.

2. In this matter my learned Brother Justice A.S.Dave has issued Rule on 17.10.2005 and thereafter the matter was placed for hearing before this Court. Mr.Alvi, learned advocate for the petitioner has stated that though the petition has been filed on 8.10.2005 but his brother has expired and therefore the matter may be taken up for urgent hearing. Hence the matter is taken up for final disposal today.

3. Mr.Alvi, learned advocate for the petitioner has invited my attention to the order of detention dated 18.8.2005. He was also detained on the same day. He has also shown the grounds supplied by the authority. The learned advocate has also invited my attention to

the fact that in the grounds of detention the authority has alleged that petitioner has committed offences under Sec.25(1B)(a) of the Arms Act registered with D.C.B., Ahmedabad City, as Crime Register No.3026 of 2004 on 19.12.2004 that he has kept sword. Two offences were also registered against the petitioner with Meghaninagar Police Station being Crime Register Case No.3157 of 2004 on 10.8.2005 committed under Sec.25(1B)(a) of the Arms Act. There also one sword and live cartridges were seized from the petitioner. Both these investigations are going on. Sec.25 of the Arms Act provides punishment for certain offences. Sec.25(1B)(a) of the Arms Act provides that whoever acquires, has in his possession or carries any firearm or ammunition in contravention of section 3.

4. Learned advocate for the petitioner has stated that the matter is covered by judgment of the Hon'ble Apex Court in the case of Mustakmiya Jabbarmiya Shaikh Vs. M.M.Mehta, Commissioner of Police and others reported in 1995(2) GLR 1268. In that case the Apex Court in para 8 on page 1273 and para 9 on page 1273 & 1274 has considered the definition of dangerous person, Sec.3(1) of the Act, concept of “public order” and “law and

order” in this behalf. The Apex Court also considered earlier judgment of Piyush Kantilal Mehta Vs. Commissioner of Police reported in 1989(1) GLR 563.

> “The Act has defined “dangerous person” in clause (c) of Sec.2 to mean a person who either by himself or as a member or leader of a gang habitually commits or attempts to commit or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Penal Code or any of the offences punishable under Chapter V of the Arms Act. The expression 'habit' or 'habitual' has, however, not been defined under the Act. According to The Law Lexicon by P.Ramanatha Aiyar, Reprint Edn. (1987), p.499, 'habitually' means constant, customary and addicted to specified habit and the term habitual criminal may be applied to anyone who has been previously convicted of a crime to the sentences and committed to prison more than twice. The word 'habitually' means 'usually' and 'generally'. Almost similar meaning is assigned to the words 'habit' in Aiyar's Judicial Dictionary, 10th Edn. p.485. It does not refer to the frequency of the occasions but to the invariability of

practice and the habit has to be proved by totality of facts. It, therefore, follows that the complicity of a person is an isolated offence is neither evidence nor a material of any help to conclude that a particular person is a “dangerous person” unless there is material suggesting his complicity in such cases which lead to a reasonable conclusion that the person is a habitual criminal. In Gopalanchari v. State of Kerala, AIR 1981 SC 674 this Court had an occasion to deal with expressions like “bad habit”, 'habitual', 'desperate', 'dangerous', and 'hazardous'. This Court observed that the word habit implies frequent and usual practice. Again in Vijay Narain Singh v. State of Bihar, 1984(3) SCC 14 this Court construed the expression 'habitually' to mean repeatedly or persistently and observed that it implies a thread of continuity stringing together similar repetitive acts but not isolated, individual and dissimilar acts and that repeated, persistent and similar acts are necessary to justify an inference of habit. It, therefore, necessarily follows, that in order to bring a person within the expression “dangerous person” as defined in clause (c) of Sec.2 of the

Act, there should be positive material to indicate that such person is habitually committing or attempting to commit or abetting the commission of offences which are punishable under Chapter XVI or Chapter XVII of I.P.C., or under Chapter V of the Arms Act and that a single or isolated act falling under Chapter XVI or Chapter XVII of I.P.C., or Chapter V of the Arms Act cannot be characterised as a habitual act referred to in Sec.2(c) of the Act."

"Further, sub-sec.(1) of Sec.3 of the Act confers power on the State Government and a District Magistrate or a Commissioner of Police under the direction of the State Government to detain a person on being satisfied that it is necessary to do so with a view to preventing him from acting in any manner prejudicial to the maintenance of "public order". The explanation attached to Sub-sec.(4) of Sec.3 reproduced above in the foregoing para contemplates that "public order" shall be deemed to have been affected adversely or shall be deemed likely to be affected adversely inter alia if any of the activities of any person referred to in sub-sec. (4) directly or indirectly, are causing or is likely

to cause any harm, danger or alarm or feeling of insecurity among the general public or any section thereof or a grave or widespread danger to life, property or public health. Sub-sec.(4) of Sec.3 also provides that for the purpose of Sec.3, a person shall be deemed to be 'acting in any manner prejudicial to the maintenance of public order' when such person is a “dangerous person” and engaged in activities which affect adversely or are likely to affect adversely the maintenance of public order. It, therefore, becomes necessary to determine whether besides the person being a “dangerous person” his alleged activities fall within the ambit of the expression 'public order'. A distinction has to be drawn between law and order and maintenance of public order because most often the two expressions are confused and detention orders are passed by the authorities concerned in respect of the activities of a person which exclusively fall within the domain of law and order and which have nothing to do with the maintenance of public order. In this connection it may be stated that in order to bring the activities of a person within the expression of “acting in any manner prejudicial to the maintenance

of public order", the fall out and the extent and reach of the alleged activities must be of such a nature that they travel beyond the capacity of the ordinary law to deal with him or to prevent his subversive activities affecting the community at large or a large section of society. It is the degree of disturbance and its impact upon the even tempo of life of the society or the people of a locality which determines whether the disturbance caused by such activity amounts only to a breach of "law and order" or it amounts to "public order". If the activity falls within the category of disturbance of "public order" then it becomes essential to treat such a criminal and deal with him differently than an ordinary criminal under the law as his activities would fall beyond the frontiers of law and order, disturbing the even tempo of life of the community of the specified locality. In the case of Arun Ghosh v. State of W.B., 1970 (1) SCC 98 this Court had an occasion to deal with the distinction between law and order and public order . Hidayatullah, C.J.(as he then was), speaking for the Court observed that public order would embrace more of the community than law and order. Public order

is the even tempo of the life of the community taking the country as a whole or even a specified locality. Disturbance of public order is to be distinguished from acts directed against individuals which do not disturb the society to the extent of causing a general disturbance of public tranquility. It is the degree of disturbance and its effect upon the life of the community in a locality which determines whether the disturbance amounts only to a breach of law and order. It has been further observed that the implications of public order are deeper and it affects the even tempo of life and public order is jeopardized because the repercussions of the act embrace large sections of the community and incite them to make further breaches of the law and order and to subvert the public order. An act by itself is not determinant of its own gravity. In its quality it may not differ from another but in its potentiality it may be very different. Again in the case of Piyush Kantilal Mehta v. Commissioner of Police, 1989 Supp. (1) SCC 322 : [1989)(1) GLR 563 (SC)], this Court took the view that in order that an activity may be said to affect adversely the maintenance of public

order, there must be material to show that there has been a feeling of insecurity among the general public. If any act of a person creates panic or fear in the minds of the members of the public upsetting the even tempo of life of the community, such act must be said to have a direct bearing on the question of maintenance of public order. The commission of an offence will not necessarily come within the purview of public order which can be dealt with under ordinary general law of the land."

The Apex Court also considered earlier judgment of Piyush Kantilal Mehta Vs. Commissioner of Police reported in 1989(1) GLR 563.

5. The learned advocate for the petitioner has also relied upon Division Bench judgment of this Court (Coram: C.K.Thakkar, Actg.C.J. (as he was then) and K.M.Mehta, J.) in the case of Ashokbhai Jivraj @ Jivabhai Solanki Vs. Police Commissioner, Surat and others reported in 2000(1) G.L.H. 393 particularly para 22.

6. Mr.Poojari, learned AGP has tried to support the order of the authority. He has also filed affidavit-

in-reply and stated that the grounds stated by the authority in the detention order is correct and clear and they have also examined the documents in this behalf that the petitioner was a dangerous person and therefore the authority after satisfying itself has detained the petitioner under PASA as dangerous person.

7. I have considered the submissions made in this behalf. In view of the judgment of the Apex Court in the case of Mustakmiya Jabbarmiya Shaikh (supra) as well as Division Bench judgment of this Court in the case of Ashokbhai Jivraj (supra), the petition is required to be allowed. There is no proper satisfaction arrived at by the authority. Mr.Alvi is right in his submission that even if the offences which have been committed by the petitioner that violates only “law and order” and not “public order” as envisaged by the Apex Court as well as Division Bench judgment of this Court and therefore the authority has not considered the material aspect in this behalf. The material which has been set out is not adequate to pass the detention order.

8. For the foregoing reasons, the petition is allowed.

The impugned order dated 18.8.2005 passed by the respondent No.1-authority is quashed and set aside. The detenu Kamleshkumar Jawaharlal Rai is ordered to be set at liberty forthwith unless required in any other case. Rule is made absolute. D.S., permitted.

(K.M. Mehta, J.)

syed/